

## Internal Revenue Service

Number: **201147022**

Release Date: 11/25/2011

Index Number: 9100.22-00, 992.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:INTL:B6

PLR-131195-11

Date:

August 16, 2011

In Re:

### Legend

Taxpayer =

State A =

Company B =

Business B =

Accounting Firm =

Law Firm =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This responds to your letter dated Date 1, requesting a ruling that grants Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A ("Election to be Treated as an Interest Charge DISC") in accordance with Temp. Treas.

Reg. § 1.921-1T(b)(1), thereby allowing Taxpayer to file a Form 4876-A that will be treated as timely filed within 90 days after the beginning of its first taxable year. The rulings given in this letter are based on facts and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Facts**

Taxpayer was incorporated on Date 2 under the laws of State A. Taxpayer is the sister corporation of Company B, a State A corporation in the business of Business B. Taxpayer and Company B are owned by the same shareholders. Taxpayer intended to be treated as an interest charge domestic international sales corporation ("IC-DISC") since its inception, acting on a commission agent basis with respect to Company B's sales of products for use outside the United States. Taxpayer and Company B have a calendar year annual accounting period.

In Year 1, Accounting Firm advised Taxpayer's shareholders of the tax advantages of forming an IC-DISC. The shareholders concluded that it would be appropriate to establish an IC-DISC, and directed Accounting Firm to coordinate with Law Firm to perform all necessary steps to satisfy the legal and tax requirements to create the IC-DISC and ensure that it qualified as an IC-DISC for federal tax purposes.

On Date 3, Taxpayer received a package from Law Firm containing the documents related to operating as an IC-DISC. Taxpayer assumed that once the documents contained in the package were prepared, all the requirements to conduct business, and be treated as an IC-DISC for federal tax purposes for its first taxable year ending Date 4, were satisfied. Accordingly, Taxpayer began operating as an IC-DISC, including maintaining its own bank account and maintaining separate books and records to record IC-DISC transactions. However, neither Accounting Firm nor Law Firm filed Form 4876-A on Taxpayer's behalf, nor did either firm inform Taxpayer of the need to file the form. Thus, Taxpayer's Form 4876-A was never timely filed within 90 days after the beginning of its first taxable year, as is required by Temp. Treas. Reg. § 1.921-1T(b)(1).

Taxpayer and its shareholders are inexperienced in IC-DISC related issues. Therefore, they relied on Accounting Firm and Law Firm with respect to incorporating Taxpayer and ensuring that it qualified as an IC-DISC for federal tax purposes. At all times, Taxpayer, Company B, and their shareholders believed Accounting Firm and Law Firm employed qualified tax professionals competent to handle these issues. However, Law Firm failed to prepare a Form 4876-A and failed to notify Taxpayer of the need to file Form 4876-A within 90 days after the beginning of its first taxable year. During a meeting between Taxpayer and Accounting Firm in Date 5, Accounting Firm determined

that Taxpayer's Form 4876-A had not been timely filed. This occurred after the due date for Form 4876-A for Taxpayer's first taxable year. Consequently, Taxpayer did not satisfy the requirements to be treated as an IC-DISC. Taxpayer represents that it has not been contacted by the IRS with respect to its failure to file Form 4876-A.

The period of limitations on assessment under section 6501(a) has not expired for Taxpayer's taxable years for which the election is being made or any taxable years that would have been affected by the election had Taxpayer made a timely election.

Taxpayer has requested a ruling that grants an extension of time to file Form 4876-A within 60 days from the issuance of a favorable ruling letter so that the form will be treated as timely filed within 90 days after the beginning of its first taxable year.

### **Law and Analysis**

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC<sup>1</sup> shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish

---

<sup>1</sup> As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interest of the Government.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we concluded that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A required by Temp. Treas. Reg. § 1.921-1T(b)(1). Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this letter ruling should be filed with the Form 4876-A and shareholder consent statements.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

PLR-131195-11

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representative.

Sincerely,

---

Christopher J. Bello  
Chief, Branch 6  
Office of Associate Chief Counsel  
(International)

cc: